



STATE OF INDIANA }  
COUNTY OF ELKHART }

IN THE ELKHART SUPERIOR COURT 2  
CAUSE NO 20D02-1106-PL-37

LEO VANNORMAN, et al.,

Plaintiffs,

vs.

FLEXSTEEL INDUSTRIES, INC., LDL REALTY )  
COMPANY, LLC., DAVID DYGERT AND )  
PHYLLIS B. DYGERT, )

Defendants. )

**RESPONSES OF DEFENDANT, FLEXSTEEL INDUSTRIES, INC.  
TO PLAINTIFFS' FIRST SET OF INTERROGATORIES**

Defendant Flexsteel Industries, Inc. ("Flexsteel"), through counsel, and pursuant to Indiana Trial Rule 33, responds to Plaintiffs' *First Set of Interrogatories* as follows:

**GENERAL OBJECTIONS**

1. Flexsteel objects to the instructions provided along with Plaintiffs' Interrogatories. Flexsteel is not bound by these instructions, but by the Indiana Rules of Trial Procedure and Indiana law construing those rules. The instructions have been disregarded in providing these answers, to the extent they require anything more than what is required by Indiana law.
2. Flexsteel objects to the lengthy and overly broad definitions of various words and phrases included with the Interrogatories, including "Hazardous Materials," "Raw Material," "Manufacturing Process," "Release," "Supplier" and "Identify," and will not be bound by them especially to the extent beyond or inconsistent with applicable legal descriptions. Flexsteel has endeavored to answer all Interrogatories assuming normal English definitions for the words used in the Interrogatories and in its Responses. To the extent practical,

Flexsteel was mindful of reasonable definitions of the terms used by Plaintiffs in their Interrogatories, but it was not bound by them in providing its answers.

3. Flexsteel specifically objects to Plaintiffs' definition of "Upholstered Furniture" as overbroad, unduly burdensome, vague, and not likely to lead to the discovery of admissible evidence. This definition encompasses the entirety of Flexsteel's manufacturing operations, regardless of location, manufacturing processes, products manufactured, responsibility for the management of day-to-day operations at those manufacturing locations, or even whether those operations still exist today. Information related to Flexsteel's "Upholstered Furniture" manufacturing sites other than the former Dygert Seating Division of Flexsteel in Elkhart, Indiana have no relevance to this litigation and are not likely to lead to the discovery of admissible evidence related to operations in Elkhart, Indiana – the only basis of Plaintiffs' claims. Therefore, Flexsteel limits its responses to these Interrogatories to the former Elkhart, Indiana operations, then known as the Dygert Seating Division of Flexsteel. Flexsteel further objects to these Interrogatories as Flexsteel's ability to respond to Interrogatories pertaining to the former Dygert Seating Division is impaired by the operation of that Division as a separate business unit, and to the extent documents and data were retained by the purchaser of the assets of the Dygert Seating Division in January, 2002.
4. Flexsteel objects to the extent these Interrogatories seek information within the scope of the attorney-client privilege or work product doctrine. If any information is inadvertently disclosed that is within the scope of these privileges, Flexsteel has not done so intentionally and reserves its right to assert those privileges at any time in these proceedings. To the extent a response might arguably waive any objection or claim of privilege, such waiver shall be limited to that response only and shall not extend to any further discovery responses.

5. Flexsteel asserts a limited objection to each Interrogatory to the extent it seeks proprietary and sensitive business information, such as product designs, non-public wage information, and nonpublic financial information. Flexsteel is prepared to produce documents containing this information, but only subject to an agreed protective order to be entered between Flexsteel, Plaintiffs, and all other parties who wish to obtain copies.
6. Flexsteel objects to each interrogatory to the extent that it is overly broad and burdensome, and seeks information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. In answering these interrogatories, Flexsteel has attempted to supply all responsive information, currently available. Additional responsive information may come to light as this case progresses, and Flexsteel will also periodically add to or revise its answers as necessary to comply with Indiana Trial Rule 26(E).
7. Flexsteel has not yet completed its investigation of facts relating to this action and has not yet completed its preparation for trial. The responses or objections to each Interrogatory are given without prejudice to Flexsteel's right to supplement or produce, subsequently discovered evidence relating to the proof of presently known material facts.

**FLEXSTEEL'S RESPONSES TO PLAINTIFFS' FIRST INTERROGATORIES**

**Interrogatory No. 1.** Identify each person answering these interrogatories. For each of the persons identified state the following:

- a) His or her full name;
- b) His or her date of birth;
- c) His or her social security number;
- d) Any aliases or other names that he or she has used;

- e) His or her home address;
- f) The name and address of his or her employers for the last ten (10) years;
- g) The job positions and duties he or she has with each employer;
- h) His or her education and training background.

**RESPONSE:**

- a) I am Carl Breen, Flexsteel's Controller. I spoke with the following Flexsteel employees in order to answer the various interrogatories: Tim Hall, Ron Klosterman, Tom Burkart, Jim Gilbertson, Todd Van Der Jagt, and former employee Rita Stephan. I also received information from former employee Jerry Alexander.
- b) August 19, 1948
- c) Flexsteel objects to this subpart of Interrogatory 1 due as unduly invasive of Mr. Breen's privacy, irrelevant, and not likely to lead to the discovery of admissible evidence.
- d) None.
- e) 13594 Ryan Road; Peosta, IA 52068
- f) Flexsteel Industries, Inc.
- g) Flexsteel objects to this subpart as vague, and interprets it to request Mr. Breen's job positions and duties within the last ten years at Flexsteel.

In 2001, Mr. Breen was employed by Flexsteel as the Manager of Risk and Benefits. In this role, Mr. Breen was responsible for insurance and benefits administration. In 2005, his title changed to Corporate Controller. As Corporate Controller, Mr. Breen is responsible for accounting systems and financial reporting and policies, as well as insurance and benefits administration.

- h) Mr. Breen has a B.A. in Accounting from Loras College in Dubuque, Iowa. Mr. Breen also has received on-the-job training.

**Interrogatory No. 2. IDENTIFY the following:**

- a) All officers and directors of FLEXSTEEL.
- b) Date and place of incorporation of FLEXSTEEL.

c) All subsidiaries and/or affiliates of FLEXSTEEL.

Response.

a) The current officers of Flexsteel are:

Carrie Bertsch Bleile  
Thomas D. Burkart  
Jeffrey T. Bertsch  
Kevin F. Crahan  
Patrick M. Crahan  
Donald D. Dreher  
Lee D. Fautsch  
James E. Gilbertson  
Timothy E. Hall  
Ronald J. Klosterman  
James R. Richardson  
Michael A. Santillo

The current directors of Flexsteel are:

Bruce Boylen  
Jeffrey T. Bertsch  
Mary C. Bottie  
Patrick M. Crahan  
Lynn J. Davis  
Robert E. Deignan  
Thomas E. Holloran  
Ronald J. Klosterman  
Thomas M. Levine  
Robert J. Maricich  
Eric S. Rangen  
James R. Richardson  
Nancy E. Uridil

b) 1929, Minnesota

c) Flexsteel will produce a corporate organizational chart as of December 31, 2010.

**Interrogatory No. 3.** IDENTIFY the officers, directors, or employees responsible for regulatory compliance, environmental affairs or community relations at any of YOUR

UPHOLSTERED FURNITURE manufacturing sites in the continental United States from 1983 to present, including the FACILITIES.

For each provide the following:

- d) His or her full name;
- e) His or her date of birth;
- f) His or her social security number;
- g) His or her electronic mail address at work;
- h) Any aliases or other names that he or she has used;
- i) His or her home address;
- j) His or her electronic mail address for personal use;
- k) The name and address of his or her employers for the last ten (10) years;
- l) The job positions and duties he or she has with each employer,
- m) His or her education and training background.
- n) The number of years that he or she has worked for FLEXSTEEL;
- o) The number of years that he or she has served in his or her current position at FLEXSTEEL.

**RESPONSE:**

Pursuant to Flexsteel's General Objection No. 3, Flexsteel limits its response to this Interrogatory to the former manufacturing site known as the Dygert Seating Division of Flexsteel. Flexsteel also objects to subparts (c) and (g) of this Interrogatory as unduly invasive of the named individuals' privacy, irrelevant, and not likely to lead to the discovery of admissible evidence. Flexsteel further objects to this interrogatory as overbroad, unduly burdensome, and vague. Flexsteel further objects to the overbroad and irrelevant time period identified in this Interrogatory, which seeks information related to a variety of manufacturing sites unrelated to the former Dygert Seating Division of Flexsteel, over more than 28 years. Subject to these general and specific objections:

With respect to the former Dygert Seating Division of Flexsteel, Dave Dygert, as the General Manager, was responsible for regulatory compliance, environmental affairs, and community relations. It is my understanding that at least Jerry Alexander and Greg Gaskill also assisted in carrying out these responsibilities for compliance and environmental affairs at the

Dygart Seating Division.

Greg Gaskill is deceased.

The last address Flexsteel has for Dave Dygart is 22271 Heron Cove, Elkhart, IN 46516. His job title was General Manager of the Dygart Seating Division during his entire employment with Flexsteel. He worked for the former Dygart Seating Division of Flexsteel from March 1997 to January 2002.

The last known address Flexsteel has for Jerry Alexander is 13151 State Road 120; Middlebury, Indiana, 46540. Mr. Alexander worked in maintenance at the former Dygart Seating Division of Flexsteel from March 1997 to January 2002.

**Interrogatory No. 4.** Identify the name and address of each SUPPLIER to each of YOUR UPHOLSTERED FURNITURE manufacturing sites in the continental United States from 1983 to present, including the FACILITIES.

**RESPONSE:**

Pursuant to Flexsteel's General Objection No. 3, Flexsteel limits its response to this Interrogatory to the former manufacturing site known as the Dygart Seating Division of Flexsteel. Flexsteel also objects to Plaintiffs' definition of "Supplier," which is vague and ambiguous in that it does not define "contaminant." Flexsteel further objects to the overbroad and irrelevant time period identified in this Interrogatory, which seeks information related to a variety of manufacturing sites unrelated to the former Dygart Seating Division of Flexsteel, over more than 28 years. Subject to these general and specific objections:

The Dygart Seating Division was responsible for selecting suppliers to, and arranging for the supply of any products used at, its manufacturing site. Flexsteel did not select suppliers or supply any products to the former Dygart Seating Division, with the exception of metal frames that Flexsteel supplied to that Division for all or part of March, 1997 through January 2002, and fabric from time to time. Additional vendors to the Dygart Seating Division are listed on business files restored from an AS400 used by the Dygart Seating Division between mid-2000 and 2001. These files and other available responsive, non-privileged documents in Flexsteel's possession that may identify suppliers to the former Dygart Seating Division of Flexsteel, will be produced in response to Plaintiffs' *Requests for Production*.

**Interrogatory No. 5.** For each SUPPLIER identified in your answers to Interrogatory No. 4, identify each RAW MATERIAL supplied by each such SUPPLIER, and the dates such RAW MATERIALS were supplied.

**RESPONSE:**

See Flexsteel's objections and response to Interrogatory No. 4. Flexsteel further objects to the phrase "Raw Material," as vague and overbroad. Subject to these general and specific objections: Flexsteel generally does not have records detailing materials supplied to the Dygert Seating Division. Some purchase records for approximately 2001 are contained in files restored from an AS400 used by the Dygert Seating Division. These files, and any other available, responsive and non-privileged documents in Flexsteel's possession that may identify materials supplied to the Dygert Seating Division and dates that such materials were supplied, will be produced in response to Plaintiffs' *Requests for Production*.

**Interrogatory No. 6.** Identify each of YOUR employees who have had any responsibilities, or performed any activities, relating to:

- p) The overall manufacturing and distribution activities at YOUR UPHOLSTERED FURNITURE manufacturing sites in the continental United States from 1983 to present, including the FACILITIES;
- q) COMMUNICATIONS with SUPPLIERS; or
- r) Environmental matters at any UPHOLSTERED FURNITURE manufacturing site in the continental United States since 1983, including the FACILITIES.

**RESPONSE:**

Pursuant to Flexsteel's General Objection No. 3, Flexsteel limits its response to this Interrogatory to the former manufacturing site known as the Dygert Seating Division of Flexsteel. Flexsteel further objects to the overbroad and irrelevant time period identified in this Interrogatory, which seeks information related to a variety of manufacturing sites unrelated to the former Dygert Seating Division of Flexsteel, over more than 28 years. Flexsteel also objects to this Interrogatory as overbroad and vague. Subject to these general and specific objections, Flexsteel states:

- d) Greg Lucchese was the Operations Manager for the Dygert Seating Division. Flexsteel will produce employee listings identifying other employees who worked in manufacturing and/or distribution for the Dygert Seating Division, to the extent this distinction was made in those listings. The last address Flexsteel has for Mr. Lucchese is 2207 E. Jackson Street, Elkhart, IN 46516.
- e) Greg Gaskill was the Purchasing Manager for the Dygert Seating Division until approximately 2000. He is deceased. Debra Yoder, the Material Control/Scheduling Assistant, then assumed some of his responsibilities. The last address Flexsteel has for Ms. Yoder is 810 Emerson Street, Goshen, IN 46525. Flexsteel will produce employee listings identifying other employees who worked in purchasing, to the extent this distinction was made.



- f) See Flexsteel's response to Plaintiffs' Interrogatory No. 3.

**Interrogatory No. 7.** Concerning YOUR operation of the FACILITIES, specify the following:

- s) Whether FLEXSTEEL owned or leased the real property on which the FACILITIES sit;
- t) Whether FLEXSTEEL owned or leased the buildings, RAW MATERIALS, HAZARDOUS MATERIALS, and other property that comprised the FACILITIES;
- u) The date on which FLEXSTEEL'S lease and/or ownership interest[s] expire[d]; and
- v) The amount of money (or other compensation) FLEXSTEEL paid for its lease and/or ownership interest[s] in the real property and/or assets identified above, and to whom it paid the amount[s].
- w) The amount of money (or other compensation) FLEXSTEEL received upon its divestiture of any interest in the real property and/or assets identified above, and IDENTIFY any PERSON from whom FLEXSTEEL received any such money or compensation.

**RESPONSE:**

- a) Flexsteel objects to this subpart as vague. It is unclear whether Plaintiffs are asking if Flexsteel was a lessee or a lessor of the real property. Subject to this objection: Flexsteel both owned and leased the real property on which the Marina Drive and Cooper Drive buildings are located, depending on the time period.
- b) Flexsteel objects to this subpart as vague. It is unclear whether Plaintiffs are asking if Flexsteel was a lessee or a lessor of the real property. The undefined phrase "other property," and definition of "raw materials" are also vague and overbroad Flexsteel interprets these phrases to mean the property, other than real property and fixtures, located at Dygert Seating Division in Elkhart, Indiana. Subject to these objections, Flexsteel both owned and leased the buildings at Marina Drive and Cooper Drive, depending on the time period. Flexsteel owned the materials used at the Dygert Seating Division.
- c) On March 18, 1997, Flexsteel purchased limited assets from the bankrupt entity Dygert Seating, Inc for \$4,249,401. The same date, Flexsteel purchased the real property and improvements at the Marina Drive and Cooper Drive sites from Dave and Phyllis Dygert for \$2,020,000.

On January 2, 2002, Flexsteel sold the assets of its Dygert Seating Division to PBD Corporation for \$468,164.46. On the same date, Flexsteel leased the Marina Drive site

to PBD Corporation. Flexsteel then sold the real property and improvements at Marina Drive to LDL Realty Company, LLC on approximately August 5, 2004 for \$1,550,000.

In approximately June 2002, Flexsteel leased the Cooper Drive site and its improvements to Partners Supply. On approximately February 28, 2005, Flexsteel sold the Cooper Drive real property and its improvements to Fred Lands for \$495,000.

- d) See Flexsteel's response to subpart (c)
- e) See Flexsteel's response to subpart (c).

**Interrogatory No. 8.** Identify all RAW MATERIALS used in the MANUFACTURING PROCESS at YOUR UPHOLSTERED FURNITURE manufacturing sites in the continental United States from 1983 to present, including the FACILITIES.

**RESPONSE:**

Flexsteel objects to this Interrogatory as duplicative of Interrogatory No. 5. See Flexsteel's Response to that Interrogatory.

**Interrogatory No. 9.** Identify and explain the method of maintaining and recording the inventory of RAW MATERIALS at YOUR UPHOLSTERED FURNITURE manufacturing sites in the continental United States from 1983 to present, including the FACILITIES. Your answer should include, but not be limited to, the following:

- a) Methods used to determine how much of each type of RAW MATERIAL is used in the MANUFACTURING PROCESS;
- b) Methods used to determine how much of RAW MATERIAL is stored at YOUR UPHOLSTERED FURNITURE manufacturing sites, including the FACILITIES;
- c) Methods used to determine whether there has been a RELEASE of any RAW MATERIALS or. HAZARDOUS MATERIALS at YOUR UPHOLSTERED FURNITURE manufacturing sites, including the FACILITIES;

**RESPONSE:**

Pursuant to Flexsteel's General Objection No. 3, Flexsteel limits its response to this Interrogatory to the former manufacturing site known as the Dygert Seating Division of Flexsteel. Flexsteel also objects to the overbroad and irrelevant time period identified in this

Interrogatory, which seeks information related to a variety of manufacturing sites unrelated to the former Dygert Seating Division of Flexsteel, over more than 28 years. Flexsteel further objects to this Interrogatory as overbroad and vague, particularly given the overbroad definition of "raw materials," which appears to encompass every product or substance purchased by Flexsteel, regardless of the purpose of its purchase (housekeeping, etc) and regardless of whether such product or substance was considered "inventory" by Flexsteel. Flexsteel therefore interprets this interrogatory as seeking information solely on materials considered "inventory" at the Dygert Seating Division of Flexsteel. Subject to these general and specific objections:

Flexsteel believes that the Engineering Department at the former Dygert Seating Division of Flexsteel generated a bill of materials required for each product. The purchasing department would then purchase the materials needed to support production levels of that product. The Dygert Seating Division of Flexsteel did not maintain large quantities of materials used in the manufacturing processes at that Division, except fabric.

Flexsteel asked its former Dygert Seating Division to do semi-annual inventory at June and December. This inventory would have been done with the methodologies and software selected by employees of the Dygert Seating Division, which was an operationally and technologically separate business unit from the other Flexsteel divisions. In mid or late-2000, Flexsteel provided the Dygert Seating Division with an AS400 computer. Based on documents to be produced, it appears that the Dygert Seating Division attempted to take an inventory of at least some of the materials used in its manufacturing processes, such as fabric, using this AS400 system.

**Interrogatory No. 10.** Identify all HAZARDOUS MATERIAL RELEASES at any of YOUR UPHOLSTERED FURNITURE manufacturing sites, including the FACILITIES, since 1983, and the quantity of each such HAZARDOUS MATERIAL RELEASE.

**RESPONSE:**

Pursuant to Flexsteel's General Objection No. 3, Flexsteel limits its response to this Interrogatory to the former manufacturing site known as the Dygert Seating Division of Flexsteel. Flexsteel also objects to the overbroad and irrelevant time period identified in this Interrogatory, which seeks information related to a variety of manufacturing sites unrelated to the former Dygert Seating Division of Flexsteel, over more than 28 years. Flexsteel further objects to the defined term "release" as vague and overbroad. Subject to these objections, Flexsteel states:

Based on current information and knowledge, and assuming Plaintiffs do not mean to include the permitted or lawful use of Hazardous Materials in the ordinary course of business in their definition of "Release," Flexsteel is unaware of any Releases of Hazardous Materials at the

former Dygert Seating Division of Flexsteel. *See also*, Flexsteel's Response to Interrogatory 12, below. Discovery is ongoing.

**Interrogatory No. 11.** List and explain all actions taken by FLEXSTEEL to determine the environmental condition of the FACILITIES at any time prior to acquiring ownership of the FACILITIES and/or prior to operating the FACILITIES.

**RESPONSE:**

Flexsteel engaged Weaver Boos Consultants, Inc. to conduct a Phase I Environmental Site Assessment ("ESA"). As part of this Phase I ESA, Weaver Boos also reviewed records obtained by FOIA requests from various state and local agencies and obtained relevant environmental reports on the subject property, which are appended to the Phase I ESA. This Phase I ESA, dated February 6, 1997, stated that there was "no evidence of recognized environmental conditions in connection with the subject property."

**Interrogatory No. 12.** List and explain all actions taken by FLEXSTEEL to determine the environmental condition of the FACILITIES at any time after acquiring ownership of the FACILITIES and/or after operating the FACILITIES.

**RESPONSE:**

Flexsteel objects to the phrase "determine the environmental condition" as vague, and interprets this Interrogatory to request communications with the Elkhart County Health Department ("ECHD") or other state and federal agencies, the use of environmental engineering consulting firms, and environmental sampling and response activities. Subject to this interpretation, the Dygert Seating Division of Flexsteel conducted at least the following activities:

- (1) Participation in the Elkhart County Ground Water Protection Ordinance Inspections.
- (2) Sampling of the septic system at least once between 1997 and 2001.
- (3) Regular work with Industrial Safety & Environmental Services ("ISES") to evaluate chemical usage and submit annual reports to the appropriate state and federal agencies.
- (4) Jerry Alexander contacted the ECHD in approximately October 2001 to obtain instructions on how to clean up a small spill of hydraulic oil from a 55 gallon drum, called "HD 68 Way Oil," on the Cooper Drive manufacturing site. ECHD instructed him to "Remove soil at least 6" below site/or smell of oil. Dispose of properly." Mr. Alexander reportedly performed these tasks as instructed

(5) Flexsteel engaged Weaver Boos Consultants, Inc. to conduct a Phase I Environmental Site Assessment ("ESA") when Flexsteel sold the assets of its Dygert Seating Division. As part of this Phase I ESA, Weaver Boos also reviewed records obtained by FOIA requests from various state and local agencies and obtained relevant environmental reports on the subject property, which are appended to the Phase I ESA. This Phase I ESA, dated July 3, 2002, stated that there was "no evidence of recognized environmental conditions in connection with" either the Cooper Drive or Marina Drive sites.

**Interrogatory No. 13.** Identify all environmental or engineering consulting firms that have performed any work for FLEXSTEEL at any property or manufacturing facility in the State of Indiana since 1983. In your response, state the following:

- a. The name and address of the firm;
- b. The name, phone number and electronic mail address of the contact at the firm;
- c. Whether or not FLEXSTEEL employed the firm;
- d. the purpose and type of any work performed;
- e. The title of any report, recommendation, or other document prepared by the firm and the location of any such report, recommendation, or document; and
- f. IDENTIFY any DOCUMENT or COMMUNICATION CONCERNING any such work.

**RESPONSE.**

Pursuant to Flexsteel's General Objection No. 3, Flexsteel limits its Response to this Interrogatory to the former manufacturing site known as the Dygert Seating Division of Flexsteel. Flexsteel further objects to the overbroad and irrelevant time period identified in this Interrogatory, which seeks information related to a variety of manufacturing sites unrelated to the former Dygert Seating Division of Flexsteel, over more than 28 years. Subject to these general and specific objections, Flexsteel states:

(1) Weaver Boos Consulting, Inc. performed the February 6, 1997 Phase 1 ESA. The Weaver Boos employees named on this Phase 1 are Colin Campbell and David S. O'Dea. Flexsteel does not know if Mr. Campbell and Mr. O'Dea were employed out of the Elkhart, Indiana or Chicago, Illinois offices for Weaver Boos, listed on this Phase 1 ESA. The current contact information for this firm is available online. Flexsteel required this report as part of its environmental due diligence before purchasing limited assets of Dygert Seating, Inc. out of bankruptcy. Flexsteel does not know whether Flexsteel or

Dave Dygert retained this firm. Responsive, unprivileged documents will be produced in response to Plaintiffs' *Requests for Production*.

(2) According to the July 3, 2002 Phase 1 ESA, this ESA was conducted by:

Weaver Boos & Gordon of Michiana, LLC  
603 East Bronson Street, Suite #1  
South Bend, IN 46601  
Phone: 574/232-4826  
Current contact information for this firm is available online.  
Persons who conducted the Phase 1 ESA include Ed Stefanek.

Flexsteel employed Weaver Boos to conduct this Phase 1 ESA in conjunction with Flexsteel's sale of the assets of its Dygert Seating Division. Responsive, unprivileged documents will be produced in response to Plaintiffs' *Requests for Production*.

(3) The Dygert Seating Division of Flexsteel regularly employed ISES for a variety of regulatory reporting and environmental compliance needs. Contact information for that firm is:

Tris O. Gour  
Industrial Safety & Environmental Services  
30723 Old U.S. Highway 20  
Elkhart, Indiana 46514  
Phone: 574/637-8357

(4) According to the 2002 Phase 1 ESA, Safety Kleen removed for recycling a 55-gallon drum of used sewing oil on a periodic basis from the Dygert Seating Division.

Discovery is ongoing.

**Interrogatory No. 14.** With regard to advice or recommendations obtained from any consultants identified above, identify and explain any and all actions taken or not taken based on such advice or recommendation. Identify the date such action was taken, the person making the decision to take such action or inaction, and state whether any written or recorded document exists regarding their decision.

**RESPONSE:**

Flexsteel incorporates its response to Interrogatory 13 here, including all general and

specific objections stated therein. Flexsteel further states:

- (1) Both the 1997 and 2002 Phase I ESAs conducted by Weaver Boos did not identify any evidence of recognized environmental conditions at the Cooper Drive or Marina Drive sites. Neither ESA made any recommendations, and therefore no further action was taken in response to these reports.
- (2) The Dygert Seating Division of Flexsteel performed a variety of actions based upon the advice or recommendation of ISES, related primarily to regulatory compliance and reporting activities. Responsive documents will be produced in response to Plaintiffs' *Requests for Production*.
- (3) Flexsteel is not aware of any advice or recommendations provided by Safety Kleen to the Dygert Seating Division of Flexsteel.

**Interrogatory No. 15.** List and explain all actions taken by FLEXSTEEL to:

- a. Maintain or prevent environmental contamination from RELEASES of HAZARDOUS MATERIALS at YOUR UPHOLSTERED FURNITURE manufacturing sites, including the FACILITIES; and
- b. Prevent HAZARDOUS MATERIAL contamination within the soil and/or groundwater within YOUR UPHOLSTERED FURNITURE manufacturing sites' property boundaries, including the FACILITIES, from migrating to off-site properties.

**RESPONSE:**

Pursuant to Flexsteel's General Objection No. 3, Flexsteel limits its Response to this Interrogatory to the former manufacturing site known as the Dygert Seating Division of Flexsteel. Flexsteel also objects to this Interrogatory as overbroad and unduly burdensome, and unlimited in time. Subject to these general and specific objections:

See Flexsteel's Response to Interrogatory 12, which Flexsteel incorporates here. In addition to the actions listed in Response to Interrogatory 12:

The Dygert Seating Division never used or maintained significant amounts of any hazardous materials. Adhesives and other materials used in manufacturing processes and/or for the maintenance of equipment at the Dygert Seating Division were stored inside the buildings at the Cooper Drive and Marina Drive manufacturing sites. Many of the materials used by the Dygert Seating Division were non-hazardous.

Neither the Cooper Drive nor Marina Drive manufacturing sites had floor drains in the manufacturing areas. The former Dygert Seating Division of Flexsteel manufacturing sites were maintained in a clean and orderly fashion. The Dygert Seating Division employed Safety Kleen to transport its used oil for recycling and HIMCO to haul trash and refuse.

Jerry Alexander reportedly created a Hazard Communication Program for the bankrupt entity, Dygert Seating, Inc., which he maintained throughout his employment with the former Dygert Seating Division of Flexsteel. This compliance program included written policies and formal training. Mr. Alexander also trained employees of the former Dygert Seating Division of Flexsteel in OSHA compliance on an annual basis, which included how to read MSDS sheets and how to properly handle hazardous chemicals.

Mr. Alexander also maintained a Master List of Hazardous Materials at the former Dygert Seating Division of Flexsteel. This List was maintained in the break room with a binder including MSDS sheets for the materials listed, and the Hazard Communication Program policies. He also walked through both the Cooper Drive and Marina Drive manufacturing sites twice a year and wrote down every product containing a chemical, whether used in the manufacturing process or in the office. He used this process to update the Master List of Hazardous Materials and ensure that he had MSDS sheets on file.

The Dygert Seating Division also participated in regular ECHD site inspections, and had its septic system water sampled at least once, in 1999.

**Interrogatory No. 16.** Has FLEXSTEEL conducted any soil sampling or groundwater sampling at the FACILITIES that included testing for HAZARDOUS MATERIALS? If so, identify when the sampling was conducted and identify the types and amounts of any. HAZARDOUS MATERIALS that were detected.

**RESPONSE:**

A. Soil Sampling: Flexsteel has not conducted any soil sampling at the former Dygert Seating Division's manufacturing sites; however, discovery is ongoing.

B. Groundwater Sampling: According to ECHD records, on at least February 19, 1999, Greg Gaskill arranged for the sampling of septic system water (not groundwater) at the Dygert Seating Division pursuant to the Elkhart County Ground Water Protection Plan. This septic sampling event detected 29.0 ug/L of toluene and 3.9 ug/L of o-Xylene; no chlorinated volatile organic compounds were detected.

**Interrogatory No. 17.** List each and every CLAIM and for each CLAIM state the following:

- a. Name of claimant;
- b. Name assigned and/or CLAIM number,
- c. Describe all actions taken FLEXSTEEL as a result of the CLAIM; and



- d. IDENTIFY each and every PERSON who participated in any review or investigation of the CLAIM and who had final authority to determine. FLEXSTEEL'S actions with respect to the CLAIM.

**RESPONSE:**

Pursuant to Flexsteel's General Objection No. 3, Flexsteel limits its Response to this Interrogatory to the former manufacturing site known as the Dygert Seating Division of Flexsteel. Flexsteel further objects to the overbroad definition of "Claim." Flexsteel further objects to the overbroad and irrelevant time period identified in this Interrogatory, which seeks information related to a variety of manufacturing sites unrelated to the former Dygert Seating Division of Flexsteel, over more than 28 years. Subject to these general and specific objections, Flexsteel states: None known, but discovery is ongoing.

**Interrogatory No. 18.** Has FLEXSTEEL received a "104(e)" Request for Information from the EPA? If so, IDENTIFY each such document(s) and IDENTIFY all documents provided by FLEXSTEEL in response thereto.

**RESPONSE:**

Pursuant to Flexsteel's General Objection No. 3, Flexsteel limits its Response to this Interrogatory to the former manufacturing site known as the Dygert Seating Division of Flexsteel. Flexsteel also objects to this Interrogatory as overbroad, and unlimited in time. Subject to Flexsteel's objections, Flexsteel responds to this Interrogatory as follows: No CERCLA § 104(e) Request by U.S. EPA has been received by Flexsteel.

**Interrogatory No. 19.** Have YOU received any requests for information from the USEPA, IDEM or the Elkhart County Health Department concerning contamination at the FACILITIES? If so, IDENTIFY all such requests and describe your response(s). If any such request or response was reduced to written form, or if you have any notes of any such conversation, then IDENTIFY and describe all such DOCUMENTS and/or notes.

**RESPONSE**

Flexsteel objects to the assumptions underlying this Interrogatory, which assumes that the contamination is "at" the manufacturing site for the former Dygert Seating Division, and not merely passing underneath that site. Subject to this general objection: No.

**Interrogatory No. 20.** Has FLEXSTEEL ever been sued for injury and/or damages arising out of an alleged RELEASE? If so, state the following for each such lawsuit:

IDENTIFY each party to the lawsuit;

IDENTIFY each party's attorney(s);

IDENTIFY the court and cause number of the lawsuit;

State whether the lawsuit is pending or has concluded, and if it has concluded, state whether the resolution was by settlement, summary adjudication, trial and/or appeal. If the resolution was other than by settlement, identify the prevailing party;

IDENTIFY all current or former officers, directors, employees, agents, representative, or expert witnesses of FLEXSTEEL who provided testimony either at trial or in a deposition, and set forth the date and location on which such testimony was given.

**RESPONSE.** No, other than this pending lawsuit.

**Interrogatory No. 21.** Has FLEXSTEEL or any of its insurers ever performed any type of risk audit or risk assessment relating to RELEASES(s) at the FACILITIES? If the answer is yes, please state when such risk audit or risk assessment was performed and IDENTIFY all PERSONS involved in conducting any such risk audit or risk assessment and IDENTIFY all DOCUMENTS CONCERNING any such risk audit or risk assessment.

**RESPONSE:** Not to the best of Flexsteel's knowledge, except to the extent Phase I ESA might come within these vague terms and so Defendant incorporates its Response No. 13 above.

Interrogatory No. 22. Identify and explain any policy or procedure regarding the notification of property owners who may be potentially impacted by harmful environmental conditions arising from the operation of any FLEXSTEEL UPHOLSTERED FURNITURE site; including the FACILITIES. IDENTIFY all DOCUMENTS CONCERNING any such policy or procedure.

**RESPONSE:**

Pursuant to Flexsteel's General Objection No. 3, Flexsteel limits its Response to this Interrogatory to the former manufacturing site known as the Dygert Seating Division of Flexsteel. Flexsteel also objects to this Interrogatory as overbroad, and unlimited in time. This Interrogatory assumes facts which are not true. Flexsteel objects to the assumption in this Interrogatory that Flexsteel has any legal duty to "notify" property owners who "may be potentially impacted" by the operations of the Dygert Seating Division, environmental or otherwise. Subject to Flexsteel's objections, Flexsteel responds as follows:

There was no reason for the Dygert Seating Division to notify property owners who "may be potentially impacted" by "harmful environmental conditions" arising out of the operations of the former Dygert Seating Division since Flexsteel is not aware of the existence of any such conditions at that Division.

Interrogatory No. 23. Identify the amount of HAZARDOUS MATERIAL generated from the FACILITIES each year, beginning in 1983, including the method used to determine the amount.

**RESPONSE:**

Flexsteel objects to the overbroad and irrelevant time period identified in this Interrogatory, which seeks information related to a variety of manufacturing sites unrelated to the former Dygert Seating Division of Flexsteel, over more than 28 years. Flexsteel limits its Response to this Interrogatory to the years 1997 to January 2, 2002 – the time period in which the Dygert Seating Division of Flexsteel operated. Flexsteel also objects to this Interrogatory as vague, overbroad, and ambiguous. Subject to these general and specific objections:

Based on current information and knowledge the only solid waste that could be said to have been "generated from" the Dygert Seating Division of Flexsteel, other than trash and refuse, was waste adhesive from the purge of "glue guns" onto cardboard, which was dried before off-

site disposal. Because the facility only had a few 1-quart glue guns that were occasionally purged, generation of this waste adhesive would have been well below the monthly 220 pound threshold for RCRA Conditionally Exempt Small Quantity Generators.

**Interrogatory No. 24.** IDENTIFY all COMMUNICATIONS between YOU and the Elkhart County Health Department, IDEM or the USEPA, RELATING TO YOUR UPHOLSTERED FURNITURE manufacturing sites in the continental United States between 1983 and present, including the FACILITIES.

**RESPONSE.**

Pursuant to Flexsteel's General Objection No. 3, Flexsteel limits its Response to this Interrogatory to the former manufacturing site known as the Dygert Seating Division of Flexsteel. Flexsteel further objects to the overbroad and irrelevant time period identified in this Interrogatory, which seeks information related to a variety of manufacturing sites unrelated to the former Dygert Seating Division of Flexsteel, over more than 28 years. Subject to these general and specific objections, Flexsteel states:

According to available ECHD records, the Dygert Seating manufacturing site was inspected by the ECHD in 1999 and 2001. The Dygert Seating Division also provided the ECHD with septic sample results in 1999, in which no chlorinated volatile organic compounds were detected. On approximately October 8, 2001, Jerry Alexander also initiated contact to the ECHD concerning the small surface spill of hydraulic oil at the Cooper Drive manufacturing site.

The Dygert Seating Division submitted annual "Form R" Reports, identifying the use of certain metals, and annual "Tier II" Inventory Reports which identified the use of rolled electrical welded tubing at the Cooper Drive manufacturing site.

Documents identifying these communications will be produced in response to Plaintiffs' Requests for Production. Discovery is ongoing.

**Interrogatory No. 25.** Are YOU aware of any use of trichloroethylene ("TCE"), or any material containing TCE, at the FACILITIES between 1983 to present? if so, describe all such uses.

**RESPONSE:**

Flexsteel is not aware of any bulk purchases of TCE or any product containing TCE at any point in time for use at either the Marina Drive or Cooper Drive manufacturing sites.

Flexsteel knows of only two products used at the Cooper Drive and/or Marina Drive manufacturing sites, at any time, that reportedly contained any amount of TCE. In both instances, the products were available from the hardware store in containers sized for individual/household consumer use. These products were:

(1) an aerosol spray degreaser that reportedly contained some TCE was purchased in 16 oz. aerosol spray cans and used to clean the cutters.

(2) A TCE-based paint thinner/stripper that Jerry Alexander reportedly purchased in approximately 1996 from the hardware store in an individual/household consumer sized container, in conjunction with painting doors at the Marina Drive manufacturing site, and was allowed to evaporate thereafter; this occurred before Flexsteel purchased limited assets of the bankrupt entity, Dygert Seating, Inc.

**Interrogatory No. 26.** Are YOU aware of any use of tetrachloroethylene ("PCE"), or any material containing PCE, at the FACILITIES between 1983 to present? If so, describe all such uses.

**RESPONSE:**

Flexsteel is not aware of any bulk purchases of PERC or any product containing PERC, at any point in time, for use at either the Marina Drive or Cooper Drive manufacturing sites.

Flexsteel knows of only one product reportedly used at the Cooper Drive and/or Marina Drive manufacturing sites, at any time, that reportedly contained any amount of PERC. The product was called "604 Hi-Temp Aerosol Adhesive," and was an aerosol spray adhesive that contained less than 10% PERC by weight. This aerosol adhesive was reportedly purchased for limited use by the research and design employees for prototyping the build of a seat, and was not used in manufacturing processes.

**Interrogatory No. 27.** Are YOU aware of any use of 1-1-1-trichloroethane ("TCA"), or any material containing TCA, at the FACILITIES between 1983 to present? If so, describe all such uses.

**RESPONSE:**

Flexsteel is not aware of any uses of TCA or material containing TCA by the Dygert Seating Division of Flexsteel; however, at either the Marina Drive or Cooper Drive manufacturing sites, based on ECHD records, the bankrupt entity Dygert Seating, Inc. used an adhesive called "Audal," which contained some TCA, prior to 1994.

**Interrogatory No. 28.** Identify each and every insurance carrier for the FACILITIES or activities carried out at the FACILITIES since 1983. For each carrier provide the following:

- a. The policy number;
- b. The dates for each policy;
- c. The type of coverage supplied by the policy; and
- d. Whether or not you have made a claim against the policy for losses occurring at the FACILITIES as a result of RELEASES at the FACILITIES

**RESPONSE:**

Flexsteel objects to this Interrogatory as overbroad, in that it seeks insurance policy information for 14 years before Flexsteel purchased limited assets of the bankrupt entity, Dygert Seating, Inc. Flexsteel limits its Response to the time period of 1997 to the present. Subject to these objections and understanding, Flexsteel states:

Copies of Flexsteel's available insurance policies from 1997 to the present will be produced in response to Plaintiffs' Requests for Production. Before this lawsuit was filed, Flexsteel had not made any claims against these policies for losses occurring at the Dygert Seating Division manufacturing site.

All of Flexsteel's liability carriers during the years 1997 – 2010 have been supplied with a copy of the Plaintiffs' Complaint in the above captioned case, and Flexsteel has asked them to provide its defense.

**Interrogatory No. 29.** Identify the legal relationship between FLEXSTEEL and YOUR Dygert Seating Division from January 30, 1997 to present.

**RESPONSE:**

The Dygert Seating Division did not exist prior to March 1997. Dygert Seating was a Division of Flexsteel Industries, Inc. from approximately March 18, 1997 to January 2, 2002. The Dygert Seating Division of Flexsteel ceased to exist after approximately January 2, 2002.

**Verification**

I, Carl Breen, Corporate Controller for Flexsteel Industries, Inc., hereby certify that I am authorized to sign this Verification on behalf of Flexsteel Industries, Inc.; that while I do not have personal knowledge of all of the facts recited in the Answers of Defendant, Flexsteel Industries, Inc. to Plaintiffs' First Set of Interrogatories, I have been informed that the responses were prepared with the assistance and advice of counsel and that they are based on information collected by others at or on behalf of Flexsteel Industries, Inc. and that said responses are true to the best of my knowledge, or information and belief.

6/02/11  
Date

Carl Breen  
Carl Breen, Corporate Controller  
On behalf of Flexsteel Industries, Inc.

As to Objections,

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### CERTIFICATE OF SERVICE

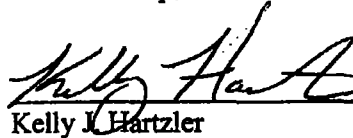
I hereby certify that the above and foregoing document has been served upon the following, by depositing the same in the United States mail, postage prepaid, this 13<sup>th</sup> day of June, 2011.

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